

**April 28, 2004  
FOR IMMEDIATE RELEASE**

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**Docket No. 30083**

<b>STATE OF IDAHO,</b>	)	
	)	<b>Boise, February 2004 Term</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>2004 Opinion No. 53</b>
<b>v.</b>	)	
	)	<b>Filed: April 28, 2004</b>
<b>GERALD R. WEBER,</b>	)	
	)	<b>Frederick C. Lyon, Clerk</b>
<b>Defendant-Appellant.</b>	)	

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Appeal from the District Court of the Fourth Judicial District of the State of Idaho for Boise County. Hon. Kathryn A. Sticklen, District Judge.

The judgment of conviction entered in the district court is affirmed.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.  
Eric D. Frederickson argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Lori A. Fleming argued.

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This is a felony driving under the influence (DUI) case. Gerald R. Weber (“Weber”) was charged with felony DUI pursuant to Idaho Code sections 18-8004 and 18-8005(5), and misdemeanor possession of an open container of alcohol in a motor vehicle pursuant to Idaho Code section 23-505.

Under Idaho Code section 18-8005(5), a defendant’s DUI conviction will constitute a felony whenever that defendant has received two prior DUI convictions within a five-year period. Weber objected to the State of Idaho using his two previous 1998 misdemeanor DUI convictions as a basis to charge him with a felony. Weber claimed that the prior misdemeanor DUI convictions were both legally and constitutionally flawed. The district court denied Weber’s request after a hearing. Thereafter, Weber entered a conditional plea to felony DUI pursuant to Idaho Criminal Rule (I.C.R.) 11(a)(2), reserving the right to appeal the denial of his request. Weber filed a timely appeal.

On appeal, the Idaho Court of Appeals rejected Weber's constitutional argument on the basis that he had no right to challenge the validity of his prior DUI convictions on grounds other than the denial of his constitutional right to an attorney. However, the Court of Appeals held that Weber was allowed to challenge the validity of his prior DUI convictions based on a procedural violation of Idaho Criminal Rule 11(c) which sets out the guidelines that a trial court must follow when accepting a guilty plea. The Court of Appeals concluded that the court that accepted Weber's guilty pleas, which resulted in his prior misdemeanor DUI convictions, did not follow the requirements of I.C.R. 11(c). Therefore, the Court of Appeals vacated Weber's felony DUI conviction and remanded the case back to the district court. Both parties filed petitions for review with the Idaho Supreme Court.

The Idaho Supreme Court accepted review to determine: (1) whether Weber was entitled to collaterally attack the validity of his previous misdemeanor DUI convictions on the constitutional ground that his guilty pleas were not knowingly, voluntarily, and intelligently made, and (2) whether a violation of I.C.R. 11(c) provided Weber an independent ground to collaterally attack his prior convictions.

In a unanimous decision, the Idaho Supreme Court held that: (1) a defendant has no right to collaterally attack the constitutional validity of his or her prior DUI convictions when used to support a charge of felony DUI unless the prior convictions were obtained in violation of the defendant's constitutional right to counsel; and (2) a violation of I.C.R. 11(c) does not provide a defendant with an independent basis to collaterally attack the validity of a prior conviction used in a subsequent enhancement proceeding.